

DISTRICT OF COLUMBIA
DOH Office of Adjudication and Hearings
825 North Capitol Street N.E., Suite 5100
Washington D.C. 20002

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

HUGHES CHILD DEVELOPMENT CENTER
and ESTELLE HUGHES
Respondents

Case No.: I-00-40923

FINAL ORDER

I. Introduction

This case arises under the Civil Infractions Act of 1985 (D.C. Official Code §§ 2-1801.01 *et seq.*) and Title 29 Chapter 3 of the District of Columbia Municipal Code (“DCMR”). By Notice of Infraction (00-40923) served September 17, 2001, the Government charged Respondents Hughes Child Development Center (“Center”) and Estelle Hughes with violating 29 DCMR 316.2 for allegedly failing to provide teachers and assistants or aides for each group of children at all times.¹ The Notice of Infraction charged that the violation occurred on September 6, 2001 at 2316 Rhode Island Avenue, NE, and sought a fine of \$500.

¹ 29 DCMR 316.2 provides: “There shall be a teacher, who may also be the director, and an assistant teacher or aide for each group at all times. In part-day programs (up to four (4) hours per day), a volunteer may be substituted for an assistant teacher or aide. During non-peak hour (before 8:30 a.m. and after 4:30 p.m.), an assistant teacher may substitute for a teacher.”

This administrative court received Respondents' timely plea of Deny to the charge pursuant to D.C. Official Code § 2-1802.02(3) and, by order dated October 9, 2001, scheduled a hearing. By letter dated November 20, 2001, Respondents sought to amend their plea from Deny to Admit with Explanation pursuant to D.C. Official Code § 2-1802.02(2), and requested a reduction or suspension of any applicable fine. In their letter, Respondents explained that they believed there were two groups of children at the Center on the day of the inspection: one group of eight children all under 2 years old accompanied by two employees and another group of twelve children between the ages of 2 ½ and 3 ½ years old also accompanied by two employees. Respondents further explained that, at the time of inspection, the 2 ½ to 3 ½ year old group had just returned from a trip to the library. Six of the twelve children in the group then went downstairs in the Center with one employee, while the other six children stayed upstairs with another employee who was preparing to serve lunch. Respondents stated that, on the date of the inspection, three teachers and one aide were present at the Center.

By order dated November 28, 2001, I permitted the Government to respond to Respondents' application and request. The Government did not oppose Respondents' application to amend their plea. Accordingly, Respondents' application is granted. The Government did note, however, that at the time of inspection the Center maintained three groups: one group consisting of six children ranging in ages from 2 ½ to 3 years old and accompanied by one teacher and one aide; a second group consisting of six children all under 2 years old accompanied by one "staff person/caregiver"; and a third group consisting of children ranging in ages from 3 to 4 years old, with only one staff person/caregiver for this group. The Government contended that Respondent violated 29 DCMR 316.2 because six staff persons were needed for

the three groups of children as opposed to the four staff persons observed. Moreover, the Government noted that Respondents had not received prior approval from the Department of Health to establish mixed-age groups or to utilize a “roaming aide.” The Government concluded that, in light of these circumstances and Respondents’ acceptance of responsibility, a minimal reduction of the fine may be appropriate.

II. Findings of Fact

1. At all relevant times, Respondent Hughes Child Development Center operated as a licensed child development center (License Number 906873-CDC) in the District of Columbia. At all relevant times, Respondent Estelle Hughes served as the director of the Center.
2. By their plea of Admit with Explanation, Respondents have admitted that they violated 29 DCMR 316.2 on September 6, 2001 as charged in the Notice of Infraction (00-40923).²
3. On September 6, 2001, Respondents failed to have a teacher and an assistant teacher or aide for each group of children at all times.
4. Respondents have accepted responsibility for their unlawful conduct.
5. Respondents have a history of failing to comply with the regulatory requirements for child development centers as set forth in 29 DCMR Chapter 3. *See, e.g., DOH v. Hughes Child Development Center*, OAH No. I-00-40030 at 2-3 (Final Order, March 1, 2000).

² Respondents’ plea obviates the need to determine whether there were two groups of children or three groups of children at the Center on the day of the inspection.

III. Conclusions of Law

1. Respondents violated 29 DCMR 316.2 on September 6, 2001. A fine of \$500 is authorized for a first offense of this Class 2 infraction. 16 DCMR §§ 3201.1(b), 3222.1(i).
2. Respondents have requested a reduction or suspension of the applicable fine. The Government has recommended that, in light of Respondents' acceptance of responsibility, a minimal reduction of the fine may be appropriate. I conclude, however, that any mitigation for Respondents' acceptance of responsibility is offset by Respondents' history of non-compliance. *See, e.g., Gallegos v. Dep't of Interior*, No. 00-3384, 2001 U.S. App. LEXIS 3371 at *6-7 (Fed. Cir. Mar. 6, 2001) (finding no abuse of discretion where administrative law judge determined that mitigating factors were insufficient to overcome aggravating factors). Accordingly, there will be no reduction or suspension of the authorized fine.

IV. ORDER

Therefore, upon the foregoing findings of fact and conclusions of law, and upon the entire record of this matter, it is hereby this _____ day of _____, 2002:

ORDERED, that Respondents, who are jointly and severally liable, shall pay a total of **FIVE HUNDRED DOLLARS (\$500)** in accordance with the attached instructions within

twenty (20) calendar days of the date of service of this Order (15 days plus 5 days service time pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

ORDERED, that if the Respondents fail to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, interest shall accrue on the unpaid amount at the rate of 1 ½% per month or portion thereof, starting from the date of this Order, pursuant to D.C. Official Code § 2-1802.03(i)(1); and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondents' licenses or permits pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real and personal property owned by Respondents pursuant to D.C. Official Code § 2-1802.03(i) and the sealing of Respondents' business premises or work sites pursuant to D.C. Official Code § 2-1801.03(b)(7).

/s/ **1/30/02**

Mark D. Poindexter
Administrative Judge